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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re M.T., et al., Persons Coming Under  
the Juvenile Court Law.

SOLANO COUNTY HEALTH AND  
SOCIAL SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

A.H.,

Defendant and Appellant.

A155537

(Solano County  
Super. Ct. Nos. J40002; J42013,  
J44109)

A.H. (mother) appeals from the juvenile court's jurisdictional and dispositional findings and orders concerning her three children, M.T. (born February 2010), P.T. (born May 2011), and L.T. (born December 2014). Mother challenges some of the evidence supporting the court's jurisdictional findings and further challenges the sufficiency of the evidence to support the court's removal of the children from her custody at disposition. We affirm.

## **FACTS<sup>1</sup>**

### **A. Background**

Forty-year-old mother is the parent of M.T., P.T., and L.T., the subjects of this dependency proceeding. The children have four older half-siblings, R.H. (born August 2000), L.H. (born May 2002), L.H. (born September 2003), and M.H-T. (born July 2006). Since the age of 18, mother has used alcohol, marijuana, methamphetamine, and cocaine, for which she has had intermittent treatment. Mother also has mental health issues for which she has periodically taken psychotropic medications and participated in therapy. Despite assistance by the Solano County Health and Social Services Department (agency) during past dependency proceedings spanning 2002 to 2008, mother's substance abuse and mental health issues resulted in the termination of her parental rights of R.H., L.H., and L.H., all of whom are currently living in adoptive placements. The court bypassed mother's reunification services for M.H-T., who lives with the child's paternal grandparents in a legal guardianship.

### **B. 2010–2011 Dependency Proceeding Concerning M.T.**

Shortly after mother gave birth to M.T. in February 2010, the agency received two reports concerning the child's safety based in part on domestic violence incidents between mother and F.T., the presumed father of M.T. and P.T. Following the filing of a Welfare and Institutions Code section 300<sup>2</sup> petition in March 2010, the court sustained allegations that M.T. was a child described in subdivisions (b) (failure to protect) and (j) (abuse of sibling). At the disposition hearing in April 2010, the court allowed M.T. to remain in mother's custody with family maintenance services and pursuant to court-ordered directives that mother was to participate in mental health and substance abuse treatment.

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<sup>1</sup> The children's fathers have not filed notices of appeals. Because they are not parties to this appellate proceeding, the facts focus primarily, if not exclusively, on mother's relationship with the children.

<sup>2</sup> All further unspecified statutory references are to the Welfare and Institutions Code.

In July 2010, after receipt of further reports of domestic violence incidents between mother and F.T., the agency removed M.T. from mother's home. The agency filed a section 387 supplemental petition alleging mother had failed to comply with court-ordered mental health and substance abuse treatment and continued to engage in domestic violence incidents with F.T. The juvenile court sustained the 387 supplemental petition allegations, removed M.T. from mother's custody, placed the child in the agency's custody, and granted mother reunification services.

At the six-month status review in February 2011, when mother was pregnant with P.T., the juvenile court returned M.T. to mother's custody with family maintenance services. At the time of P.T.'s birth in late May 2011, mother reported to hospital staff that she drank alcohol during the pregnancy. Mother also admitted she had used cocaine at the beginning of the pregnancy, but represented that she had not used cocaine for seven months and was attending "drug court" and a drug treatment program. In August 2011, after six months of family maintenance services, the juvenile court closed M.T.'s dependency, granted the parents shared legal custody, and granted mother sole physical custody.

### **C. 2013–2014 Dependency Proceeding Concerning M.T. and P.T.**

In May 2013, the agency received a report that mother and the children's father had been arrested based on a domestic violence incident at the home and there was no one available to care for M.T. and P.T. When an agency staff worker went to the home to remove the children, the worker found dangerous conditions, including "numerous alcohol bottles" within the children's reach. The agency filed a section 300 petition, later amended, alleging M.T. and P.T. were described in subdivisions (b) (failure to protect) and (j) (abuse of sibling) based, in pertinent part, on mother's history of untreated substance abuse and two domestic violence incidents with F.T. as well as the previous adjudications of mother's inability to provide and support the children's half-siblings due to mother's untreated substance abuse and mental health issues.

At the August 2013 disposition hearing, the juvenile court declared M.T. and P.T. dependents of the court, removed the children from mother's custody, and placed the

children in the agency's custody for out-of-home placements. The court granted mother six months, later extended to twelve months, of reunification services "because, by clear and convincing evidence, reunification is in the best interest[s]" of the children. At the August 2014 twelve-month status review, the juvenile court terminated the dependency and gave mother full legal and physical custody of M.T. and P.T. By that time, mother had apparently ended her relationship with the children's father, F.T., and had started a new relationship and was living with C.T. On December 31, 2014, mother gave birth to L.T., whose presumed father is C.T.

#### **D. Current 2018 Dependency Proceeding**

On February 14, 2018, the agency received a report of hazardous conditions at the home where the three children were residing with mother and C.T. Following agency staff's investigation of the report, agency staff initially found no evidence of the reported safety hazards being present at the home. However, after further investigation and assessment, agency staff determined the three children were at risk of harm due to issues relating to, among other things, the previous child welfare history and mother's mental health and substance abuse issues. During the investigation, mother reported she occasionally drank beer and previously used cocaine and methamphetamine interchangeably three times a week, but had last used methamphetamine and cocaine in 2013. Mother also stated that C.T. hit, pushed, choked, and threatened her in the presence of the children since 2015. Despite an active restraining order against C.T. issued in 2017, mother continued to live with him because she had no other place to live.

On April 24, the agency filed a section 300 petition alleging, in pertinent part, that the three children were described in subdivisions (b) (failure to support) and (j) (abuse of sibling). By this time, mother and the children had entered a domestic violence shelter and mother was receiving domestic violence case management services. Mother had also completed a mental health assessment and was awaiting recommendations. Mother denied any substance abuse but agreed to submit to drug tests at the agency's request. The agency informed the court that "mother now reports that she wants to permanently end her relationship with [C.T.]. The mother has demonstrated the capacity to ensure her

children are safe by leaving the home, entering a shelter, and seeking domestic violence services. There are areas the mother needs to continue to address to ensure the safety of the children such as meeting her mental health needs and staying clean of substances. The mother also needs further assistance in obtaining stable housing for her family. [¶] It is the Department's assessment that without further investigation and Court involvement, the [children] will continue to be placed at risk for further abuse and neglect as a result of [mother's] unmitigated safety concerns."

Following a May 15 detention hearing, the juvenile court allowed the children to remain in mother's custody but removed the children from the custody of their respective fathers. A combined jurisdiction and disposition hearing was set for June 26. In the interim, the court ordered the agency to provide mother with the following pertinent services: substance abuse treatment, parenting education, mental health referral, and "D.V. [domestic violence]" services. Mother was also specifically directed to submit to random alcohol and other substance abuse testing as arranged by the social worker. Mother was advised that she was to allow agency staff to make welfare checks and to interview the children to assess their safety and well-being along with the continued stability of the placement.

For the next several weeks, agency staff and other housing providers attempted to work with mother to help the family obtain stable housing. While the agency requested that mother submit to substance abuse testing, she missed appointments for various reasons. Ultimately, mother stopped cooperating with the agency social workers, refused to provide the agency with any information regarding the family's whereabouts, and informed agency staff that she was going to challenge the petition and the agency's involvement in her life. Nonetheless, agency staff continued to make unsuccessful efforts to contact mother to remind her of the court's orders.

On June 13, the agency filed a first amended petition adding a "b-4" allegation that, since the May detention hearing, mother had repeatedly refused to disclose the family's whereabouts or allow access to the children as ordered by the court and mother had "refused to participate in random court-ordered . . . test[s] for controlled substances,

has not engaged in services to address her mental health, substance use/abuse and homelessness and refused to meet with the assigned social worker.” The agency asked the court to set a hearing for June 19 to consider its request for the issuance of a protective custody warrant to locate the children and remove them from mother’s custody. On June 19, the juvenile court issued a protective custody warrant for the three children. The prior date for the jurisdiction and disposition hearing was vacated, and ultimately reset for October 1.

In the interim, on July 20, the agency filed a jurisdiction and disposition report recommending the petition be further amended to add allegations regarding the parents’ failure to support the children, and that the petition’s allegations should be sustained, the children removed from mother’s custody, and mother should be granted reunification services. The agency also filed a request for judicial notice of certain documents filed in the 2010–2011 and 2013–2014 dependency proceedings concerning M.T. and P.T. On August 3, agency staff was notified the children had been found residing in an apartment with mother and F.T., father of M.T and P.T. The children were taken into protective custody and placed in emergency foster care homes. Four days later, the juvenile court recalled the protective custody warrant and issued an order authorizing agency staff to arrange for the children to be tested for controlled substances using their hair strands. On September 14, the agency filed a second amended petition, adding to the b-3 allegation concerning mother’s substance abuse history that P.T. and L.T. “underwent court ordered hair strand testing and tested positive for methamphetamines, amphetamines and cocaine. (The child [M.T.] was unable to be hair strand tested due to an insufficient amount of hair).” The petition was also amended to add to the b-4 allegation information concerning mother’s failure to contact the agency, including mother’s failure to disclose the location of the children.

In its addendum report filed on September 24, the agency reported that the children had been moved from emergency placements on August 8 and placed together in a new foster care home. Agency staff arranged for the children to be tested for controlled substances; hair strands were collected on August 9 and received by the laboratory on

August 10. M.T.'s hair strands were not tested because insufficient hair had been submitted for testing. P.T. tested "non-contact positive" for exposure to amphetamines (methamphetamine and amphetamine) and cocaine (benzoyllecgonine). P.T. tested negative for exposure to marijuana, opiates, and phencyclidine (PCP). L.T. tested positive for exposure to amphetamines (methamphetamine and amphetamine) and cocaine (benzoyllecgonine). L.T.'s hair strand was not sufficient to complete testing "in other channels requested" and a new hair collection was suggested by the medical review officer.

A staff member of the center for drug and alcohol testing reported the minimum amount of time (from ingestion of a substance to a positive test in hair strands) would be 7 days, the average would be 10 days, and the maximum would be 14 days. Because the children had been tested six days after their removal from mother's home, agency staff concluded the hair strand tests demonstrated that P.T. and L.T. had been exposed to controlled substances while under mother's care and supervision. The report further indicated mother had a "normal" random drug test result on April 25, 2018 but subsequently missed random drug tests scheduled for May 24, June 6, September 17, and September 19. In its assessment and evaluation, the agency recommended mother should be offered reunification services because all three children remained at a substantial risk of physical harm or illness if returned to mother's care as P.T. and L.T. had been exposed to controlled substances while under her care and supervision.

#### **E. October 1, 2018 Contested Jurisdiction and Disposition Hearing and Juvenile Court's Findings and Orders**

On October 1, the juvenile court held a contested jurisdiction and disposition hearing. The agency submitted the matter on its July 20 jurisdiction/disposition report, its September 24 addendum report, and its request that the court consider the previous 2010 and 2013 juvenile dependency proceedings concerning M.T. and P.T. As part of the agency's case in chief, the parties stipulated that if an agency supervisor were called as a witness he would testify that mother had tested negative for drugs on September 26, 2018 and the results of a drug test taken on September 28, 2018 were still pending. The

court also heard testimony from mother and the agency supervisor. In pertinent part, mother testified concerning her housing situation, her reasons for failing to keep in contact with agency staff, her relationships with F.T. and C.T., her mental health and controlled substances issues, and her reasons for failing to submit to random drug tests.

Following counsel's closing arguments, the court declared the children dependents of the court after finding they were described under section 300, subdivisions (b) and (j). Specifically, the court sustained the amended petition, finding that if the children were returned to mother's custody they would be at substantial risk of harm due to (a) mother's extensive history of domestic violence in the presence of the children, (b) her mental health for which she had failed to take prescribed psychotropic medication and not participated in services to successfully stabilize her mental health, (c) her extensive history of substance abuse that periodically impaired her judgment and ability to provide adequate care, support, and supervision for the three children, including two children who had undergone court-ordered hair strand drug testing and tested positive for methamphetamines, amphetamines, and cocaine, (d) her repeated refusal to disclose the three children's whereabouts and failure to give agency staff access to the children as ordered by the court, and (e) her loss of parental rights to three other children following sustained allegations of untreated mental health and substance abuse issues and her inability to provide adequate care and support for those children. The court further found clear and convincing evidence supporting the continued removal of the three children from mother's custody, but that it was also in the children's best interests to grant mother reunification services though the court had the legal authority to bypass services. The court explained its findings:

"This case doesn't come to the Court with a fresh slate. It comes to the Court with a history and the history cannot be ignored by the Court because of the significant and very serious allegations that were previously sustained in any number of specific instances that involve both jurisdiction hearings, detention hearings, disposition hearings, modification hearings and then as we all know, [mother] was very successful and



graduated from dependency drug court once before and she is capable of doing what is necessary to help her children. [¶] So the Court's aware of that history.

“What's troublesome to the Court at this point in time is what has led to the new filing because, again, regrettably it appears to be a repeat of the history that brought the children to the attention of the Court on the previous occasion. [¶] That repeat of the history, again, involves some extremely troublesome information and that is when the children finally had to come into care and were tested. They tested positive for drugs. [¶] At that – it wasn't as if they just tested for marijuana. No, it was cocaine, amphetamines and again, that is an extremely dangerous situation for the two children with the positive tests. And it places them at a substantial risk. [¶] And if [mother] is not using drugs, then the children are in a circumstance where they are not being supervised and exposed to drugs and that is very difficult for two children in this case who are eight and seven years old.”

The court noted its removal orders were “temporary” in that it had the “ability down the road if appropriate to return the children to [mother's] care,” but it was not “prepared to do that [at that time] because there is clear and convincing evidence before the Court that until we have a full grasp on the circumstances involving [mother's] situation, . . . the children may me [sic] at a substantial risk of harm.”

Following the hearing on October 1, the juvenile court issued written “findings and orders after jurisdictional hearing” and “findings and orders after dispositional hearing” (two orders for each child) as to which mother's timely appeals ensued.

## **DISCUSSION**

### **I. Jurisdictional Findings and Orders**

In challenging the jurisdictional findings and orders, mother limits her challenge to the sufficiency of the evidence to support the sustained allegations regarding domestic violence and her mental health. However, the juvenile court plainly, and without question, did not remove the children because of the jurisdictional findings concerning domestic violence and mother's mental health. Instead, the court's removal orders were based exclusively on the sustained, and unchallenged, findings of mother's history of

substance abuse and the recent exposure of two children to controlled substances while under mother's care and supervision, which the court reasonably found put all three children at substantial risk of physical harm or illness if left in mother's custody without supervision.

Mother appropriately recognizes that, even assuming merit to her arguments, the jurisdictional findings and orders will not be reversed because the unchallenged sustained allegations remain unaffected by her appeal. (See *In re M.W.* (2015) 238 Cal.App.4th 1444, 1452 [“[a]s a general rule, a single jurisdictional finding supported by substantial evidence is sufficient to support jurisdiction and render[s] moot a challenge to the other findings”].) Accordingly, we conclude mother's appellate challenges to the jurisdictional findings of domestic violence and her mental health are not justiciable. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1487, 1488 (*I.A.*) [appellate court found father's challenge to a jurisdictional finding that he had engaged in domestic violence was not justiciable where juvenile court had taken jurisdiction of the child based on an unchallenged finding that mother's drug abuse prevented her from properly caring for the child].) We further conclude mother has failed to meet her burden of demonstrating that her appellate challenge to some of the jurisdictional findings warrants review on the merits. “[W]e generally will exercise our discretion and reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations], or (3) ‘could have other consequences for [the appellant], beyond jurisdiction.’ [Citations.]” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762.)

Mother argues that review is required because the challenged sustained allegations regarding domestic violence and her mental health have a “pernicious” effect in that they “form[ed] a basis for [mother's] case plan.” We are not persuaded as we see nothing in mother's case plan requirements that will negatively affect or prejudicially impede her ability to secure the return of the children. The case plan specifically recognizes that, despite the reports of domestic violence between mother and C.T., mother had taken

positive steps to address the children's exposure to domestic violence by moving the family away from the home with C.T. and relocating to various motels and shelter environments. The case plan appropriately provides for mother to meet a "safety goal" by demonstrating that she can continue to "ensure" the children's basic needs for food, clothing, safe and appropriate housing, and community-based safety; that she can "communicate/recall the ways she has met her children's needs"; and that she will "develop and work with a personal safety network to assist her in her ongoing efforts related to Family Reunification services" and "maintaining her personal parenting style." The case plan also appropriately requires mother to "prioritize and maintain her mental health," "to have her mental health assessed," and "participate in all recommendations associated with her personal mental health related to prior/current diagnoses."

We conclude our discussion by noting "[t]he juvenile court's assumption of jurisdiction under section 300 does not itself mean [mother] will lose all parental rights. 'A dependency adjudication is a preliminary step that allows the juvenile court, within specified limits, to assert supervision over the endangered child's care. But it is merely a first step, and the system includes many subsequent safeguards to ensure that parental rights and authority will be restricted only to the extent necessary for the child's safety and welfare.' " (*In re I.J.* (2013) 56 Cal.4th 766, 780, quoting *In re Ethan C.* (2012) 54 Cal.4th 610, 617.) On this record, we see no reason to review the merits of mother's contentions, which are moot and for which striking the allegations will have neither legal nor practical consequences. (*I.A.*, *supra*, 201 Cal.App.4th at p. 1492 [in the absence of a showing of either legal or practical consequence, appellate court refused to consider merits of moot jurisdictional findings even though "arguably" the court could strike findings].) This is especially so since mother has failed to specifically articulate any way in which the challenged sustained allegations could be prejudicial, potentially impact the current or future dependency proceedings, or have consequences for her beyond jurisdiction. For these reasons, we conclude mother's challenge to the jurisdictional findings "does not raise a justiciable issue," and therefore, "we do not reach the merits"

of her contentions. (*Id.* at p. 1489.) The cases mother cites in support of her arguments are factually inapposite and do not warrant a different result.

## **II. Dispositional Findings and Orders**

“ ‘After the juvenile court finds a child to be within its jurisdiction, the court must conduct a dispositional hearing. [Citation.] At the dispositional hearing, the court must decide where the child will live while under the court’s supervision.’ [Citation.]” (*In re A.S.* (2011) 202 Cal.App.4th 237, 247.) “Before the court may order a child physically removed from his or her parent’s custody, it must find, by clear and convincing evidence, the child would be at substantial risk of harm if returned home and there are no reasonable means by which the child can be protected without removal. [Citations.] The jurisdictional findings are prima facie evidence the minor cannot safely remain in the home. [Citations.] The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child. [Citation.]” (*In re T.V.* (2013) 217 Cal.App.4th 126, 135–136.) “ ‘The court may consider a parent’s past conduct as well as present circumstances.’ ” (*In re A.S.*, *supra*, at p. 247.) “We review the court’s dispositional findings for substantial evidence. [Citations.]” (*In re T.V.*, *supra*, at p. 136.)<sup>3</sup>

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<sup>3</sup> Currently pending before our Supreme Court is the following issue: “On appellate review in a conservatorship proceeding of a trial court order that must be based on clear and convincing evidence, is the reviewing court simply required to find substantial evidence to support the trial court’s order or must it find substantial evidence from which the trial court could have made the necessary findings based on clear and convincing evidence?” (See *Conservatorship of O.B.* (2019) 32 Cal.App.5th 626, review granted May 1, 2019, S254938.) Pending review, the Supreme Court denied a request to depublish *Conservatorship of O.B.* in which Division Six of the Court of Appeal, Second Appellate District, stated: “ ‘The “clear and convincing” standard . . . is for the edification and guidance of the trial court and not a standard for appellate review. [Citations.] . . . Thus, on appeal from a judgment required to be based upon clear and convincing evidence, “the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent’s evidence, however slight, and disregarding the appellant’s evidence, however strong.” [Citation.]’ [Citation.]” (*Id.* at pp. 633–634.)

In challenging the sufficiency of the evidence to support the dispositional findings and orders, mother asks us to consider the following circumstances. When an agency staff worker first interviewed mother at her home on March 6, 2018, the worker observed no unsanitary or unhygienic conditions, healthy food in the house, clean laundry, fresh diapers, and the children were asleep and appeared healthy, clean, and appropriately dressed; by the time of the October 1 hearing, the problems of domestic violence and housing had been resolved, mother had demonstrated she could protect the children from domestic violence and ultimately find and maintain housing, which was “a major cause of . . . distress,” and therefore “there were reasonable means” by which the children could be protected without removal. Mother further contends that while there were “serious concerns” remaining at the time of the October 1 hearing regarding “the children’s positive hair strand tests” for controlled substances, mother’s failure to communicate with the agency for a time, and mother’s missed drug tests (although the first and most recent tests were negative), “there was no substantial evidence shown that there were no reasonable means by which the children could be protected without removal.”

Mother’s arguments misconstrue the nature of our appellate review. We do not review the record for substantial evidence in support of a finding in mother’s favor, as she suggests by her arguments. Rather, our review is limited to determining whether the record contains substantial evidence to support the court’s dispositional findings and orders. (See *In re D.C.* (2015) 243 Cal.App.4th 41, 56 [“[w]eighing the evidence [mother] cites against contrary evidence is exclusively the province of the juvenile court; we may not substitute our judgment for that of the juvenile court in this regard”].)

Based on our review of the record, we conclude there is substantial evidence to support the dispositional findings and orders. The juvenile court rationally determined mother’s conduct (allowing two of the children to be recently exposed to controlled substances) put all three children at substantial risk of harm or illness if they were returned to her care and supervision at the time of the October 1 hearing. In making its decision, the court was mandated to consider the Legislature’s declaration that “ ‘[t]he provision of a home environment free from the negative effects of substance abuse is a

necessary condition for the safety, protection and physical and emotional well-being of the child . . . .’ ” (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.) The court was not required to accept mother’s testimony at the hearing that she was only using marijuana (for which she had a medical marijuana card), that it had been “a while” since she had last used “methamphetamine, opium[ ], [or], narcotics,” and she had never allowed anyone to use drugs around the children. Instead, given mother’s history of substance abuse and the children’s recent exposure to controlled substances, the court could rationally find mother’s testimony was not sufficient to demonstrate the children could be safely returned to her care with family maintenance services. Mother proffers no suggestion of “reasonable means” and we cannot conceive of any specific reasonable means, including monitoring by agency staff through “unannounced visits” or supervision through “in-home services,” which would have addressed “the substantial risk evident in leaving the children with [mother] unsupervised.” (*In re D.C.*, *supra*, 243 Cal.App.4th at p. 56.)

### **DISPOSITION**

The October 1, 2018 jurisdictional findings and orders and dispositional findings and orders are affirmed.

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Petrou, J.

WE CONCUR:

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Siggins, P.J.

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Fujisaki, J.

*A155537/ Solano County Health and Social Services Department v. A.H.*